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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-362

MICHELLE TAIJUANA WASHINGTON
2244 Lago Ventana
Chula Vista, CA 91914

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about December 7, 2005, the Respiratory Care Board of California, Department of Consumer Affairs, received an application for a Respiratory Care Practitioner license from MICHELLE TAIJUANA WASHINGTON (Respondent). On or about December 2, 2005, Michelle Taijuana Washington certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 22, 2006. On or about March 30, 2006, Respondent requested a hearing to contest the denial of her application for licensure.

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JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states, in pertinent part:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

" . . .

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or

1 attempting to violate, directly or indirectly, or assisting in or abetting the violation of,
2 or conspiring to violate any provision or term of this chapter or of any provision of
3 Division 2 (commencing with Section 500).

4 “ . . .

5 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
6 substantially related to the qualifications, functions, or duties of a respiratory care
7 practitioner.

8 “ . . . ”

9 8. Section 3752 of the Code states:

10 “A plea or verdict of guilty or a conviction following a plea of nolo
11 contendere made to a charge of any offense which substantially relates to the
12 qualifications, functions, or duties of a respiratory care practitioner is deemed to be a
13 conviction within the meaning of this article. The board shall order the license
14 suspended or revoked, or may decline to issue a license, when the time for appeal
15 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
16 order granting probation is made suspending the imposition of sentence, irrespective
17 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
18 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
19 the verdict of guilty, or dismissing the accusation, information, or indictment.”

20 9. Section 3752.5 of the Code states:

21 “For purposes of Division 1.5 (commencing with Section 475), and this
22 chapter [the Respiratory Care Practice Act], a crime involving bodily injury or
23 attempted bodily injury shall be considered a crime substantially related to the
24 qualifications, functions, or duties of a respiratory care practitioner.”

25 10. California Code of Regulations, title 16, section 1399.370, states:

26 “For the purposes of denial, suspension, or revocation of a license, a crime or
27 act shall be considered to be substantially related to the qualifications, functions or
28 duties of a respiratory care practitioner, if it evidences present or potential unfitness

1 of a licensee to perform the functions authorized by his or her license or in a manner
2 inconsistent with the public health, safety, or welfare. Such crimes or acts shall
3 include but not be limited to those involving the following:

4 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
5 abetting the violation of or conspiring to violate any provision or term of the Act.

6 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

7 “. . .”

8 **COST RECOVERY**

9 11. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

10 "In any order issued in resolution of a disciplinary proceeding before the board,
11 the board or the administrative law judge may direct any practitioner or applicant found to have
12 committed a violation or violations of law to pay to the board a sum not to exceed the costs of
13 the investigation and prosecution of the case."

14 12. Section 3753.7 of the Code states:

15 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
16 include attorney general or other prosecuting attorney fees, expert witness fees, and other
17 administrative, filing, and service fees."

18 13. Section 3753.1 of the Code states, in pertinent part:

19 "(a) An administrative disciplinary decision imposing terms of probation may
20 include, among other things, a requirement that the licensee-probationer pay the monetary costs
21 associated with monitoring the probation."

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 (Conviction of a Crime)

24 14. Respondent's application is subject to denial under Code sections
25 3750(d), 3750(g), and 3752, in that she was convicted of a crime substantially related to the
26 qualifications, functions, or duties of a respiratory care practitioner. The circumstances are
27 as follows:

28 **June 5, 2002 - Conviction**

1 A. On or about January 27, 2000, Respondent was
2 arrested in the State of Washington for violating Revised Code of
3 Washington (RCW) section 9A.56.160 [possession of stolen property
4 second degree].

5 B. On or about January 11, 2002, an Information was
6 filed in the Kitsap County Superior Court, State of Washington, entitled *The*
7 *State of Washington v. Michelle Taijuana Bailey*, Case No. 02-1-00051- 5,
8 charging Respondent with one count of possession of stolen property in the
9 second degree violating RCW section 9A.56.160 [possession of stolen
10 property in the second degree].

11 C. On or about June 5, 2002, Respondent pled guilty
12 and was convicted of violating RCW section 9A.56.160 [possession of
13 stolen property in the second degree].

14 **June 17, 2002 - Conviction**

15 D. On or about January 26, 2002, Respondent was
16 arrested in the State of Washington for violating RCW 9A.36.041 [fourth
17 degree assault].

18 E. Pursuant to the Court Docket, on or about March 21,
19 2002, the case was filed in Kitsap County District Court, State of
20 Washington, entitled *State of Washington v. Michelle Taijuana Bailey*, Case
21 No 13677304, charging Respondent with one count of assault in the fourth
22 degree violating RCW 9A.36.041.

23 F. On or about June 17, 2002, Respondent pled guilty
24 and was convicted of violating RCW 9A.36.041 [fourth degree assault].

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1 **January 20, 2005 - Conviction**

2 G. On or about December 19, 2004, Respondent was
3 arrested in the State of Washington for violating RCW 9A.56.050 [third
4 degree theft].

5 H. On or about December 20, 2004, a Criminal
6 Complaint was filed in the Kitsap County District Court, State of
7 Washington, entitled *State of Washington v. Michelle Taijuana Bailey*, Case
8 No. 13677306, charging Respondent with one count of theft in the third
9 degree violating RCW 9A.56.050(1) and 9A.56.020. To commit this crime,
10 the Defendant acted as a principal and/or as an accomplice of another
11 person; contrary to Revised Code of Washington 9A.08.020(2)(c) [Mode of
12 Commission - Accomplice].

13 I. On or about January 20, 2005, Respondent pled
14 guilty and was convicted of violating RCW 9A.56.050(1) [third degree
15 theft].

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 (Commission of Any Fraudulent, Dishonest, or Corrupt Act)

18 15. Respondent's application is subject to denial under Code sections
19 3750(j) and 3750(g), in that she committed a fraudulent and dishonest act by possessing
20 stolen property resulting in the conviction for theft in the third degree, as more particularly
21 described in paragraphs 14C and 14I, above.

22 **THIRD CAUSE FOR DENIAL OF APPLICATION**

23 (Conviction of a Crime Involving Bodily Injury or Attempted Bodily Injury)

24 16. Respondent's application is subject to denial under Code sections
25 3752.5, and 3750(g), in that she was convicted of a crime involving bodily injury or
26 attempted bodily injury in that she committed a criminal assault resulting in the conviction of
27 assault in the fourth degree, as more particularly described in paragraph 14F, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of MICHELLE TAIJUANA WASHINGTON for a Respiratory Care Practitioner license;
2. Directing Michelle Taijuana Washington to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: June 6, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NÚÑEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant